Article 6.

Caveat to Will.

§ 31-32. Filing of caveat.

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any party interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will; Provided that if any person entitled to file a caveat be within the age of 18 years, or incompetent as defined in G.S. 35A-1101(7) or (8), then such person may file a caveat within three years after the removal of such disability.

(b) The caveat shall be filed in the decedent's estate file. The clerk of superior court shall give notice of the filing by making an entry upon the page of the will book where the will is recorded, evidencing that the caveat has been filed and giving the date of such filing.

(c) If a will has been probated in solemn form pursuant to G.S. 28A-2A-7, any party who was properly served in that probate in solemn form shall be barred from filing a caveat. (C.C.P., s. 446; Code, s. 2158; Rev., s. 3135; 1907, c. 862; C.S., s. 4158; 1925, c. 81; 1951, c. 496, ss. 1, 2; 1971, c. 1231, s. 1; 2011-344, s. 8.)

§ 31-33. Cause transferred to trial docket.

(a) Upon the filing of a caveat, the clerk shall transfer the cause to the superior court for trial by jury. The caveat shall be served upon all interested parties in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure.

(b) After service under subsection (a) of this section, the caveator shall cause notice of a hearing to align the parties to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the alignment hearing, all of the interested parties who wish to be aligned as parties shall appear and be aligned by the court as parties with the caveators or parties with the propounders of the will. If an interested party does not appear to be aligned or chooses not to be aligned, the judge shall dismiss that interested party from the proceeding, but that party shall be bound by the proceeding.

(c) Within 30 days following the entry of an order aligning the parties, any interested party who was aligned may file a responsive pleading to the caveat, provided, however, that failure to respond to any averment or claim of the caveat shall not be deemed an admission of that averment or claim. An extension of time to file a responsive pleading to the caveat may be granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

(d) Upon motion of an aligned party, the court may require a caveator to provide security in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by the estate if the estate is found to have been wrongfully enjoined or restrained. The court may consider relevant facts related to whether a bond should be required and the amount of any such bond, including, but not limited to, (i) whether the estate may suffer irreparable injury, loss, or damage as a result of the caveat and (ii) whether the caveat has substantial merit. Provisions for bringing suit in forma pauperis apply to the provisions of this subsection. (C.C.P., s. 447; Code, s. 2159; 1899, c. 13; 1901, c. 748; Rev., s. 3136; 1909, c. 74; C.S., s. 4159; 1947, c. 781; 1971, c. 528, s. 29; 1973, c. 458; 2011-284, s. 32; 2011-344, s. 8; 2014-115, s. 2.4.)

§ 31-34: Repealed by Session Laws 2011-344, s. 8, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

§ 31-35. Affidavit of witness as evidence.

Whenever the subscribing witness to any will shall die, or be mentally incompetent, or be absent beyond the State, it shall be competent upon any issue of devisavit vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will. (1899, c. 680, s. 2; Rev., s. 3121; C.S., s. 4160; 1947, c. 781; 2011-344, s. 8.)

§ 31-36. Effect of caveat on estate administration.

(a) Order of Clerk. – Where a caveat is filed, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, as follows:

(1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;

(2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;

(3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;

(4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and

(5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. If within 10 days of service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior court pursuant to G.S. 1-301.3. (C.C.P., s. 448; Code, s. 2160; Rev., s. 3137; C.S., s. 4161; 1927, c. 119; 2009-131, s. 1; 2011-344, s. 8.)

§ 31-37: Repealed by Session Laws 2011-344, s. 8, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

§ 31-37.1. Settlement agreement; filing of judgment.

(a) Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, which must be approved by the superior court. Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a jury, in accordance with the terms of the settlement agreement. The consent of interested parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.

(b) When judgment is entered by the superior court in a caveat proceeding, the clerk of superior court shall file a copy of the judgment in the estate file and shall make entry upon the page of the will book where such will is recorded to the effect that final judgment has been entered, either sustaining or setting aside the will. (1989 (Reg. Sess., 1990), c. 949, s. 1; 2011-344, s. 8.)